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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,999	06/03/2002	William W. Muir JR.	70368-84	7197

20915 7590 03/26/2003

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EXAMINER

AHMAD, NASSER

ART UNIT PAPER NUMBER

1772

DATE MAILED: 03/26/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**Application No.  
**10/063,999**Applicant(s)  
**Muir et al.**Examiner  
**Nasser Ahmad**Art Unit  
**1772**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above, claim(s) 1-10 and 21-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11, 12, 14, and 16-20 is/are rejected.
- 7) ☒ Claim(s) 13 and 15 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 1                      6) ☐ Other:

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-10, drawn to a package, classified in class 206, subclass 233.
  - II. Claims 11-20, drawn to a film, classified in class 428, subclass 40.1.
  - III. Claims 21-24, drawn to a method of making a package, classified in class 156, subclass 250.
2. The inventions are distinct, each from the other because:
3. Inventions Group I and Group II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a cover for confidential information and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.
4. Inventions Group III and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1)

Art Unit: 1772

that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process such as forming a full opening, instead of a partially forming an opening.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Mr. John E. McGarry on March 6, 2003 a provisional election was made with traverse to prosecute the invention of Group II, claims 11-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-10 and 21-24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

8. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily

Art Unit: 1772

published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

9. Claims 11-12, 14 and 16-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Scott (6,113,271).

10. Scott relates to a film assembly comprising an opening (16), a label (18) attached to the film (12) with resealable adhesive in the main body portion (22), permanent adhesive in the label stop area (20) and a tab (24). The label covers the opening. Both the film (12) and the label (18) are thermoplastic material (col. 3, lines 30-31; and col. 4, lines 46-47 and 57-60). The film is liquid impervious as it holds wet wipes. As shown in the drawings, the label has a cut line defining a hinge and a tab.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 11-12, 14 and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Caputo (4,840,270).

Caputo relates to a film assembly comprising a die-cut opening (8) covered with a label (14) flap. The label has releasable adhesive in the main body portion and is irremovably attached at one edge (18). The label has a grip tab (see figure-2) at the opposite edge. The material for the film and label is thermoplastic. Fig. 3 shows a continuous web with openings covered with labels.

12. Claims 13 and 15 are free of the prior art uncovered so far in that the tabs has a tamper-evident portion remote from the peel portion and is more permanently attached to the film, and that the film comprises polyethylene-backed aluminum laminated to at least one layer of polytetrafluoro-ethylene.

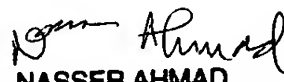
Art Unit: 1772

13. Any inquiry concerning this communication the examiner should be directed to Nasser Ahmad whose telephone number is (703) 308-4424. The examiner can generally be reached on Monday-Thursday from 7:30 a.m. to 5 p.m. and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 305-7115 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

N. Ahmad/dh  
March 20, 2003

  
**NASSER AHMAD**  
**PRIMARY EXAMINER**